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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,924	02/08/2002	Rebecca E. Whitmore	2390 (FJ-01-33)	9796
40256	7590	08/25/2004	EXAMINER	
FERRELLS, PLLC P. O. BOX 312 CLIFTON, VA 20124-1706			AUGHENBAUGH, WALTER	
			ART UNIT	PAPER NUMBER
			1772	
DATE MAILED: 08/25/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/068,924

Applicant(s)

WHITMORE ET AL.

Examiner

Walter B Aughenbaugh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-84 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-84 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 11, 2004 has been entered.

### ***Acknowledgement of Applicant's Amendments***

2. New claim 84 presented in the Amendment filed March 11, 2004 has been received and considered by Examiner.

## **REPEATED REJECTIONS**

3. The 35 U.S.C. 112 rejections of claims 6 and 53 that were repeated in paragraphs 12 and 13 of Paper 10 have been repeated for the reasons previously made of record.

4. The 35 U.S.C. 103 rejections that were repeated in paragraphs 14-19 of Paper 10 have been repeated for the reasons previously made of record.

5. The 35 U.S.C. 112 rejection of claims 11, 55 and 56 made of record in paragraph 20 of Paper 10 has been repeated for the reasons previously made of record.

6. The 35 U.S.C. 103 rejections made of record in paragraphs 21-24 of Paper 10 have been repeated for the reasons previously made of record.

## **NEW REJECTIONS**

7. Claim 84 is rejected under 35 U.S.C. 103(a) as being unpatentable over Littlejohn et al. in view of Schlaupitz et al.

Littlejohn et al. teach a sealable food container having a base serving member and a lid (col. 11, lines 4-32 and Fig. 1-16). The base serving member has a generally planar central portion that is shown in Fig. 1. The sidewall of the base serving member extends generally upwardly and outwardly from the generally planar central portion as shown in Fig. 3. The base member has an outer flange portion extending outwardly from the sidewall as shown in Fig. 3 (item 14).

The upwardly extending sidewall has an undercut annular base sealing surface (inwardly tapering frustoconical base seal area, item 52, Fig. 1 and col. 7, lines 58, col. 11, lines 8-11) that is disposed between the generally planar central portion and the outer flange portion. Littlejohn et al. teach a secondary seal ridge (item 62), which is structurally equivalent to the base stop ridge of the instant application, that is adjacent an upper extremity of the undercut annular base sealing surface (item 52) of the sidewall (col. 8, lines 60-68 and Fig. 10, item 62).

The base outer flange portion defines a continuous arc extending between the sealing recess in the sidewall to the outer edge of the container (i.e. items 54, 56, 58, 60, 62 and 64 constitute the continuous arc as claimed that extends between the sealing recess, item 52, and the outer edge of the container, see Fig. 7).

Littlejohn et al. teach that the lid is provided with a dome portion as shown in Figure 1 and a flexible lid sidewall that extends downwardly from the dome portion as shown in Figure 5. The lid also has a lid flange portion that extends outwardly with respect to the downwardly extending lid sidewall as shown in Figure 5. Littlejohn et al. teach that both the base and the lid are made of resilient materials (col. 3, lines 45-48); therefore, the sidewall of the lid of the instant application is flexible.

Littlejohn et al. teach that the lid flange portion has at its inner periphery a lid sealing portion having an annular lid sealing surface extending upwardly with respect to the downwardly extending lid sidewall (upwardly tapering frustroconical lid seal area, item 68, Figures 7-10). Littlejohn et al. teach a secondary lid seal furrow (item 76), which is structurally equivalent to the lid stop ridge of the instant application (col. 8, lines 35-38 and Fig. 10, item 76).

Littlejohn et al. teach that the base serving member and the lid are configured such that the sealing lid is secured to the base serving member by cooperation of the base stop ridge of the base serving member and the lid stop ridge of the sealing lid when the lid is forced downwardly on the base serving member, and that a seal is provided between the respective seal areas of the base and lid and also between seal furrow 76 of the lid and secondary seal ridge 62 of the base (col. 8, line 60-col. 9, line 4 and Figures 7-8).

Furthermore, Littlejohn et al. teach that the lid has a horizontal lid reinforcing ring (item 26, Figures 7-10 and col. 5, lines 20-25).

Littlejohn et al. fail to teach a laterally extending retaining shelf adjacent a lower extremity of the undercut annular base sealing surface.

Schlaupitz et al., however, teach a sealable food container having a base serving member (tray, item 12) and a lid (cover, item 14) (Figures 1-5). Schlaupitz et al. teach that the base has a laterally extending retaining shelf (laterally extending section, item 82, Figures 4 and 50) that a corresponding section of the lid is positioned over (col. 7, lines 12-39). Schlaupitz et al. teach that the laterally extending retaining shelf contributes towards effective locking of the container (col. 7, lines 34-39). Therefore, one of ordinary skill in the art would have recognized to have formed the base serving member

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taught by Littlejohn et al. such that the base serving member has a laterally extending retaining shelf that corresponds to the horizontal lid reinforcing ring (item 26) taught by Littlejohn et al. in order to achieve effective mechanical support of the lid by the base serving member and to consequently achieve effective locking of the container as taught by Schlaupitz et al.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the base serving member taught by Littlejohn et al. such that the base serving member has a laterally extending retaining shelf that corresponds to the horizontal lid reinforcing ring (item 26) taught by Littlejohn et al. in order to achieve effective mechanical support of the lid by the base serving member and to consequently achieve effective locking of the container as taught by Schlaupitz et al.

#### ***ANSWERS TO APPLICANT'S ARGUMENTS***

8. Applicant's arguments regarding the rejection of claim 1 under 35 U.S.C. 103 have been fully considered but are not persuasive. On page 16 of the March 11, 2004 Amdt., Applicant argues that the art does not teach the claimed retaining shelf "at the lower extremity of a sidewall recess", but claim 1 does not recite that the shelf is "at the lower extremity of a sidewall recess" but that the shelf is "adjacent a lower extremity of the recess". On page 18 of the March 11, 2004 Amdt., Applicant argues that the references fail to teach the claimed recess of the base sidewall, but item 52 of Littlejohn et al. ('860) reads on the recess as claimed as established in paragraph 4 of Paper 7; the base seal area, item 52, is a separately identifiable area in the sidewall, as Applicant states that recitation of a recess requires. On page 19 of the March 11, 2004 Amdt., Applicant argues that "there is no need whatsoever in Littlejohn et al. '860 for a shelf below sealing

area at 52 because there is a shelf at 54", but lid reinforcing ring (item 26) of Littlejohn et al. '860 does not have mechanical support in the form of a shelf in the container base; one of ordinary skill in the art would have recognized to have provided a shelf "adjacent a lower extremity of the recess[item 52]" in order to provide mechanical support to lid reinforcing ring (item 26) and to consequently achieve effective locking of the lid with the base as taught by Schlaupitz et al. as made of record in paragraph 4 of Paper 7.

Applicant argues that there is no base stop ridge "at the top of the sidewall recess of the base" in the proposed combination of references, but claim 1 does not recite that the base stop ridge is "at the top of the sidewall recess of the base" but that the base stop ridge is "adjacent an upper extremity of the recess".

9. Applicant's arguments page 20 of the March 11, 2004 Amdt. regarding the rejection of claim 53 under 35 U.S.C. 103 have been fully considered but are not persuasive. Applicant argues that "none of" the four references relied upon in the rejection "suggest an inwardly convex annular base stacking recess", but the proposed combination of references teaches "an inwardly convex annular base stacking recess" for the reasons provided in paragraph 6 of Paper 7.

### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. The examiner can normally be reached on Monday-Thursday from 9:00am to 6:00pm and on alternate Fridays from 9:00am to 5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh

08/19/04

WBA.

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER

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8/20/04